(16)

**HIGH COURT OF CHHATTISGARH AT BILASPUR**
**M.A. No. 567/2004**

**APPELLANT** Chandrawati Sahu and others

**Versus**

**RESPONDENTS** National Insurance Co. Ltd. and others

Judgment post for 7-5-2007

Sd/-
Dhirendra Mishra
Judge

**HIGH COURT OF CHHATTISGARH AT BILASPUR**
**M.A. No. 567/2004**

**APPELLANT**
**Claimants**

1. Chandrawati Sahu, W/o. Moharlal, aged about 22 years, Occupation House Wife, R/o. village Bishrampur (near Railway Station) P.S. Bishrampur, Tahsil Surajpur, Distt. Surguja (C.G.)
2. Renu, D/o. Moharlal, aged about 4 years, Minor through guardian mother (Appellant No. 1)
3. Dwarika Prasad Sahu, S/o. Motiram Sahu, aged about 50 years, Occupation Service
4. Hirman Devi, W/o. Dwarika Prasad Sahu, aged about 45 years, Occupation House wife.

Appellant No. 3 and 4 are R/o. Near Railway Station Bishrampur, P.S. Bishrampur, Tahsil Surajpur, Distt Surguja (C.G.)

**Versus**

**RESPONDENTS**
Non-applicants

1. National Insurance Co. Ltd. through Branch Divisional Manager, Korba (C.G.) Insurer
2. Anita Devi, W/o. Satish Agrawal, aged about 30 years, R/o. Main Road Vinoba Nagar, near Gaytri Mandir Bilaspur, Distt. Bilaspur (C.G.) presently R/o. Main Road Surajpur, P.S. & Tahsil Surajpur, Distt. Surguja (C.G.) Owner
3. Indrajit, S/o. Itwari Ram, aged about 35 years, Occupation Driver, R/o. village Joor, P.S. & Tahsil Surajpur, Distt. Surguja (C.G.) Driver

---

Shri A.K. Shukla, Adv. for the appellants.
Shri Saurabh Sharma, Advocate for the respondent No. 1.
None appears for other respondents.

---

**J U D G M E N T**

**Dhirendra Mishra, J.**

The appellants/dependants of Moharlal have preferred this appeal under Section 173 of the Motor Vehicles Act, 1988

against the award dated 19th March, 2004 passed by learned 3rd Additional Motor Accident Claims Tribunal, Surajpur in Claim Case No. 16/2002, whereby the application for compensation towards death of Moharlal has been rejected.

2. The case of the appellants before the Tribunal, in brief, was that on 29-1-1998 at about 9.30 p.m. in the night, deceased was going on a bycicle for his duty, at that time truck No. M.P.26-D/3266 driven rashly and negligently by respondent No. 3 dashed him, as a result of which he died on spot. The deceased was working as Wireless Operator in South Eastern Coalfields Ltd., Bishrampur and he died in accident in Bishrampur near State Bank on public road. It is stated that his salary was Rs. 6000/- per month and his age was 26 years. In all, a sum of Rs. 50,00,000/- was claimed under various heads.

3. The respondent No. 1 denied the averments in the claim petition. He denied the monthly income of Rs. 6000/- of the deceased. Respondent No. 1 has stated in its additional statement that no information was given by the owner of the vehicle/respondent No. 2 to the Insurance Company and the driver/respondent No. 3 was not having valid and effective driving licence at the time of accident. The respondent no. 2 has denied the averments in the petition. He has stated that the vehicle was insured with the Insurance Company and the driver was having valid and effective driving licence at the relevant time and in case the appellants are held entitled for any compensation, it shall be the liability of the Insurance Company. The respondent No. 3 has admitted the accident and has stated that the deceased was himself responsible for the accident. He has also stated that the Insurance Company is liable for payment of compensation to the claimants.

4. On the basis of the pleading of the respective parties, various issues were framed by the Tribunal and the claim petition was rejected by recording a finding that from the

evidence available on record it is not established that respondent no. 3 dashed the deceased Moharlal by truck No. M.P. 26-D/3266. It was further held that from the perusal of the documents also, it is clear that deceased Moharlal died on account of dash by unknown vehicle, and the claimants are not entitled for any compensation.

5. Learned counsel for the appellants submits that the above finding of the Tribunal is contrary to the evidence available on record. The statements of A.W. 1 Chandrawati Sahu, A.W. 2 Dwarika Sahu and A.W. 3 Vijay Mishra have been disbelieved by the Tribunal on extraneous consideration. The information of the accident was given by A.W. 2 Dwarika Sahu in the police station and report of Ex. P-2, F.I.R. Ex. P-3, investigation report Ex. P-4, post mortem report of Ex. P-6, seizure memo of Ex. P-7 and the applications submitted to Superintendent of Police Ex. P-8 and P-9 have been produced by the claimants. The police without making any proper investigation has filed the case without notice to the complainant, therefore, filing of the case on such investigation could not be made basis for reaching to the conclusion that no accident involving the truck in question occurred resulting in death of Mohar Lal and in these circumstances, the claim petition of the claimants should not be rejected.

6. On the other hand, Shri Saurabh Sharma, Advocate appearing for the Insurance Company has supported the impugned judgment and stated that from the papers produced in the evidence by the claimants themselves, the version about the accident given by the claimants is belied. The claimants in collusion with respondents no. 2 and 3 have filed a petition after almost 2 ½ years of the accident. F.I.R. was lodged on 29-1-1998 but the police filed the case on 4-8-1998 as no person witnessed the accident and driver and owner of the offending vehicle are not known. The collusion between the claimants and

the driver and owner of the vehicle is writ large as the owner and driver of the vehicle in their written statement which was filed after about more than 3 ½ years admitted the accident for the first time. However, they have not entered into the witness box and they did not inform the Insurance Company about any accident involving their vehicle immediately after the accident. Reliance is placed on **United India Insurance Co. Ltd. –v- Hussain Sab and others** reported in 2006 ACJ 1352 wherein the Karnataka High Court has held that the claimants produced F.I.R. and other documents relating to criminal case which disclosed that the deceased were traveling as passengers in a goods vehicle. The documents produced by the claimants themselves bind them and the claimants cannot take a stand that the contents of the documents filed by them did not reveal true state of affairs.

7. I have heard the learned counsel for the parties. I have perused the impugned award as also the documentary and oral evidence available on record.

8. The version given by A.W. 1 Chandrawati Sahu, wife of the deceased is that on 29-1-1998 at about 10.00 p.m. in the night, one person came to her house and informed that a person has died in accident. On this, her father-in-law Dwarika Prasad Sahu went to the place of accident and saw that her husband has died, report of which was lodged by him in the police station. She was informed about the vehicle and its driver by A.W. 3 Vijay Mishra. A.W. 2 Dwarika Prasad, father of the deceased, in his evidence has stated that at 10.00 p.m. in the night on 29-1-1998 he was informed that his son has met with an accident with a truck, on which he went to the place of accident and saw that his son has died. The number of truck M.P.C 26-D 3266 was informed by Vijay Mishra who told him that he had seen the accident. After the accident he became unconscious for two days. Thereafter, they lodged report to

police station Bishrampur and thereafter went to meet Vijay Mishra. After meeting Vijay Mishra, he again lodged report. On perusal of Ex. P-8, which is a written complaint lodged by A.W. 1 Chandravati to Superintendent of Police, it is observed that date of the complaint is not mentioned. However the complaint of Ex. P-9 was received 23-6-2002 i.e. after about 2 ½ years.

A.W. 3 Vijay Mishra, who is said to be eye-witness of the accident, has stated that he saw the accident from 25 meters distance and he noted the truck number and saw that the truck was being driven by Indrajeet. In para 7 of cross-examination he has stated that he did not lodge report of the incident till next day of the accident. He has further stated when he informed about the accident to Dwarika in the night, he did not tell him about the truck number and name of the driver. He has stated that he knew Indrajeet since last one years. He has also stated that after about 2 month from the accident, police called him and inquired about the accident and before that, he himself did not make any statement to the police about the accident.

9. From the evidence available on record, except the statement on oath of alleged eye-witness Vijay Mishra and statements of A.W. 1 and A.W. 2 that the truck in question was involved in accident, there is no other documentary evidence available on record regarding involvement of the vehicle. Even A.W. 3 Vijay Mishra has admitted that in the night of accident when he informed about the accident to A.W. 2 Dwarika Prasad, he did not tell anything about the number of the truck and name of the driver. It is difficult to believe that when Vijay Mishra, who himself has stated that he knew Indrajeet since last one year, would not have informed A.W. 2 Dwarika about the name of the driver, and even he has not informed to the police till police called him after two months of the accident.

So far as the admission of the driver of the offending vehicle regarding involvement of his vehicle in the accident in

question is concerned, he has not entered into witness box to prove averments in his written statements. Therefore, this Court is of the considered opinion that the Tribunal has not committed any illegality or irregularity in reaching to the conclusion that the appellants have failed to prove the involvement of the truck belonging to respondent No. 2 and driven by respondent No. 3 in the accident resulting in death of Mohar Lal. There is apparent collusion between the claimants, owner and driver.

10. The appeal is devoid of substance and is accordingly dismissed.

**Sd/-**
**Dhirendra Mishra**
**Judge**